

CALIFORNIA GAMBLING CONTROL COMMISSION
LEGAL DIVISION MEMORANDUM



Public Staff Report

Date: October 28, 2008

From: Heather Cline Hoganson, Staff Counsel Specialist *HC*
Evelyn M. Matteucci, Chief Counsel *EM*

Subject: Adoption of Regulations Regarding Statewide Involuntary Exclusion List

Recommendation: **ADOPT** the proposed regulations dated September 22, 2008 and direct staff to make any nonsubstantive changes to the regulations and supporting text as required by the Office of Administrative Law in during its review process.

Summary:

This is a proposed rulemaking package regarding the Commission's statutory obligation to provide for involuntary exclusions and ejections of those persons who pose a threat to the public or to the gambling industry. If adopted by the Commission, the package will be transmitted to the Office of Administrative Law for approval and enactment as an enforceable regulation.

Background:

Staff first proposed the subject regulations in 2002, and researched the various gambling jurisdictions for similar programs. Legal staff has worked with representatives from the industry and from the Bureau of Gambling Control on refining the language of the text and processes involved.

Assembly Bill 733 caused a pause in the rulemaking process, while it was determined which agency would have the authority or responsibility for this program. AB 733 was vetoed by the Governor on September 30, 2008 (message attached).

Formal notice under the Administrative Procedure Act was originally given on January 11, 2008. Comments were received and changes proposed regarding the scope of the program, civil immunity for gambling establishments, and the responsibility of gambling establishments. After the veto of AB 733, an additional comment period on the modified text of the regulations was held from October 10 through 27, 2008. No further comments were received.

A clean copy of the regulation text and form is attached.

BILL NUMBER: AB 733
VETOED DATE: 09/30/2008

To the Members of the California State Assembly:

I am returning Assembly Bill 733 without my signature.

This bill would unnecessarily shift the responsibility for developing a list of persons to be excluded or ejected from cardrooms from the Gambling Control Commission (Commission) to the Department of Justice. The Commission is near completion of the regulations needed to develop the list. As such, shifting responsibility for compiling the list to the Department of Justice would be inefficient and unnecessary. Further, shifting this responsibility would circumvent the Commission's authority under the Gambling Control Act to make final determinations on licensees.

For these reasons, I am returning this bill without my signature.

Sincerely,

Arnold Schwarzenegger

California Code of Regulations, Title 4. Business Regulations
Division 18. California Gambling Control Commission
Chapter 7. Conditions of Operation for Gambling Establishments
Article 1. General Provisions

12362. Statewide Involuntary Exclusion List

- (a) A licensee may remove a person from the gambling establishment pursuant to common law, Business and Professions Code section 19801, subdivision (i), or Business and Professions Code section 19845. A gambling establishment may also have an internal removal list to bar certain individuals from entering the specific gambling establishment only.
- (b) A licensee or government official (such as law enforcement, or agents of the California Horse Racing Board, Bureau, or Commission) ("requestor") may submit, on form CGCC – 12362 (New 10-08) "Request for Statewide Involuntary Exclusion of an Individual," which is attached in Appendix A to this chapter, a request to exclude an individual from all California gambling establishments based upon the reasons listed in Business and Professions Code section 19844 or 19845, subdivision(a)(7). Such request shall have the protections afforded under Business and Professions Code section 19846, subdivision (a).
- (c) Removal of an individual from a specific gambling establishment, as described in subsection (a) above, or statewide exclusion, pursuant to the request described in subsection (b) above, shall not be based upon the race, color, religious creed, gender, sexual orientation, marital status, national origin or ancestry, or disability of the individual, with the exception that a problem or pathological gambler may be excluded pursuant to Article 6 of these regulations (commencing with section 12460) or involuntarily excluded pursuant to this section.
- (d) Upon receipt of a request by a licensee or governmental official for statewide involuntary exclusion of an individual, the Executive Director shall review the reason for exclusion. If there appears to be good cause to place an individual on the statewide involuntary exclusion list, the Executive Director shall cause a notice of exclusion to issue to the individual. Such notice shall state the grounds for exclusion and may be served by personal service, by certified mail at the last known address of the individual, or by publication daily for 1 week in a newspaper of general circulation in the vicinity of the requestor. The exclusion shall be effective upon perfection of notice and shall remain in effect until the individual is removed from the list by Commission decision.
- (e) An individual may contest the Commission's notice of exclusion by requesting a hearing from the Commission. Such hearing may be pursuant to Business and Professions Code section 19871 or pursuant to Government Code section 11500 et seq., as determined by the Executive Director. Such hearing shall occur within 60 days of the request for hearing, unless the time of the hearing is changed by agreement of the Commission and the individual requesting the hearing.
- (f) If the individual fails to appear at the time and place set for hearing, and the individual does not contact the Commission within 24 hours to give good cause why the hearing should be reset, a default decision shall issue affirming the exclusion.

- 1 (g) At the hearing, the individual may appear in person and/or be represented by counsel at the
2 individual's own expense and present relevant testimony or documentary evidence. If a
3 governmental agency requested that the individual be placed on the statewide involuntary
4 exclusion list, the governmental agency may appear. If a licensee requested that the individual
5 be placed on the statewide involuntary exclusion list, then the licensee or designated agent
6 may appear.
- 7 (h) The standard of proof shall be preponderance of the evidence that the individual poses a threat
8 either to the public, gambling enterprise employees, or the gambling industry, or should be
9 excluded pursuant to Business and Professions Code section 19844 or 19845,
10 subdivision(a)(7). The burden of proof shall be on the Commission staff. Evidence of exclusion
11 or discipline by another gaming jurisdiction based upon the factors described in Business and
12 Professions Code section 19844 or 19845, subdivision(a)(7) may be introduced.
- 13 (i) The final decision in the matter shall be in writing, shall state any term-length for the exclusion if
14 other than lifetime, shall be sent by certified mail or personal service to the individual and the
15 governmental agency or gambling establishment which requested the individual be placed on
16 the statewide involuntary exclusion list, and shall be effective immediately.
- 17 (j) If the individual requested a hearing after the Commission's notice of exclusion and was given
18 a final decision in the matter that affirmed the exclusion, that individual shall not petition the
19 Commission to be removed from the statewide involuntary exclusion list for a minimum of one
20 year after the date of the final decision.
- 21 (k) Petitions to be removed from the statewide involuntary exclusion list shall be in writing, directed
22 to the Executive Director, and sent to the Commission at 2399 Gateway Oaks Drive, Suite 220,
23 Sacramento, CA 95833. Petitioners should clearly state the circumstances of the ejection or
24 exclusion, any new evidence which is material and necessary, including evidence that
25 circumstances have changed since placement on the statewide involuntary exclusion list, and
26 why they do not pose a threat to the public, gambling enterprise employees, the gambling
27 industry, or should otherwise not be excluded pursuant to Business and Professions Code
28 section 19844 or 19845, subdivision(a)(7). This statement shall be signed under penalty of
29 perjury under the laws of the State of California. The Executive Director may summarily deny
30 the petition without prejudice due to lack of compliance with this subsection. If not summarily
31 denied, the Executive Director shall provide notice and opportunity to comment to the
32 requestor. After review of the requestor's comments, the Executive Director, may notify the
33 Bureau to remove the individual from the statewide involuntary exclusion list, or may set the
34 matter for hearing pursuant to Business and Professions Code section 19871 or pursuant to
35 Government Code section 11500 et seq., as determined by the Executive Director.
- 36 (l) The Executive Director may order an individual removed from the list after verified information
37 is received that the individual is deceased and shall so notify the Bureau.
- 38 (m) If the Commission determines that an individual should be removed from the statewide
39 involuntary exclusion list, the Commission's decision shall include an order removing the
40 individual's name from the list, and shall so notify the Bureau. The Bureau shall amend the
41 exclusion database and send notification to all gambling establishments and to the requestor.
- 42 (n) Judicial review of the Commission's decision shall be in accordance with Code of Civil
43 Procedure, section 1094.5.

- 1 (o) The statewide involuntary exclusion list shall be maintained by the Bureau, sent or made
2 available to all gambling establishments, and may be shared with law enforcement personnel of
3 any jurisdiction.
- 4 (p) Licensees shall implement policies and procedures designed to thwart excluded persons, as
5 noticed by the Bureau, from entering the gambling establishment, ejection or removal
6 procedures of any patrons once recognized as being a known excluded person, and notification
7 to the Bureau of any incidents of attempted entry, entry, or removals of known excluded
8 persons. This regulation does not require a licensee's policies and procedures to include
9 patrons providing proof of identification before entering the gambling establishment. This
10 regulation does not require the gambling establishment to use physical force in ejecting or
11 removing an excluded person.
- 12 (q) The Commission may discipline a licensee that knowingly fails to take prompt, reasonable
13 action to eject or exclude an individual listed on the statewide involuntary exclusion list, or fails
14 to notify the Bureau of any entries or attempts to enter by an excluded person, pursuant to
15 Chapter 10 of these regulations. Discipline may include imposition of a \$500 fine for failure to
16 notify or a \$1000 fine for failure to eject.
- 17 (r) This regulation does not create any right or cause of action against a gambling establishment,
18 government official (such as law enforcement, or agents of the California Horse Racing Board,
19 Bureau, or Commission) by an excluded person or abrogate the existing common law or
20 statutory privileges and immunities of a licensee or requestor, or limit or expand the provisions
21 of Business and Professions Code section 19846.

22 Authority: Sections 19840 and 19844, Business and Professions Code.

23 Reference: Sections 19801(l) and (l), 19844, 19845, 19846, and 19940, Business and Professions Code.



REQUEST FOR STATEWIDE INVOLUNTARY EXCLUSION OF AN INDIVIDUAL

Type or print (in ink) as much information as possible on this form. If additional space is needed, please note response on a separate sheet of paper and attach to the form. **NOTE: THIS IS NOT A VOLUNTARY SELF-RESTRICTION OR SELF-EXCLUSION FORM.**

Mail this completed form to: **California Gambling Control Commission, 2399 Gateway Oaks Drive, Suite 220, Sacramento CA 95833.**

SECTION 1: PERSONAL INFORMATION

Full Legal Name:

First	Middle (if applicable)	Last
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Other Names (Former Names (such as Maiden names), Nicknames, or Aliases / A.K.A.'s):

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Home Address:

Street	City	State	Zip Code
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Mailing Address (if different than Home Address):

Street	City	State	Zip Code
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Home Telephone Number:

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Business Number:

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Games most often played:

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SECTION 2: PHOTO AND VISUAL DESCRIPTION

Gender: Male ☐

Female ☐

Date of Birth:

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Race/Ethnicity:

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Height:

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Weight:

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Hair Color/Type:

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Eye Color:

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Date of Photograph:

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CA Drivers License
or other ID

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Distinguishing marks (such as visible scars or tattoos – describe mark & location):

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Type of vehicle normally driven:

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License Plate:

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AFFIX A RECENT
PASSPORT QUALITY
PHOTOGRAPH
HERE SHOWING
HEAD AND SHOULDERS OF
PERSON TO BE EXCLUDED

SECTION 3: AFFIRMATION BY KEY EMPLOYEE OR OWNER OR BY GOVERNMENT EMPLOYEE

NOTE: This form is not for voluntary self-restriction or self-exclusions. This form is not to be completed by patrons.

The facts and reasons why the individual should be excluded are as follows:

The information provided above is true and accurate to the best of my knowledge and **the individual described above should be excluded because he or she poses a threat** to the public, gambling enterprise employees, or the gambling industry.

Signature: _____ Date:

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Print Name, Title, and Gambling Establishment or Facility Name or Governmental Entity:

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